

1081

No. 2921

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UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

LOUIE DING,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

TRANSCRIPT OF RECORD

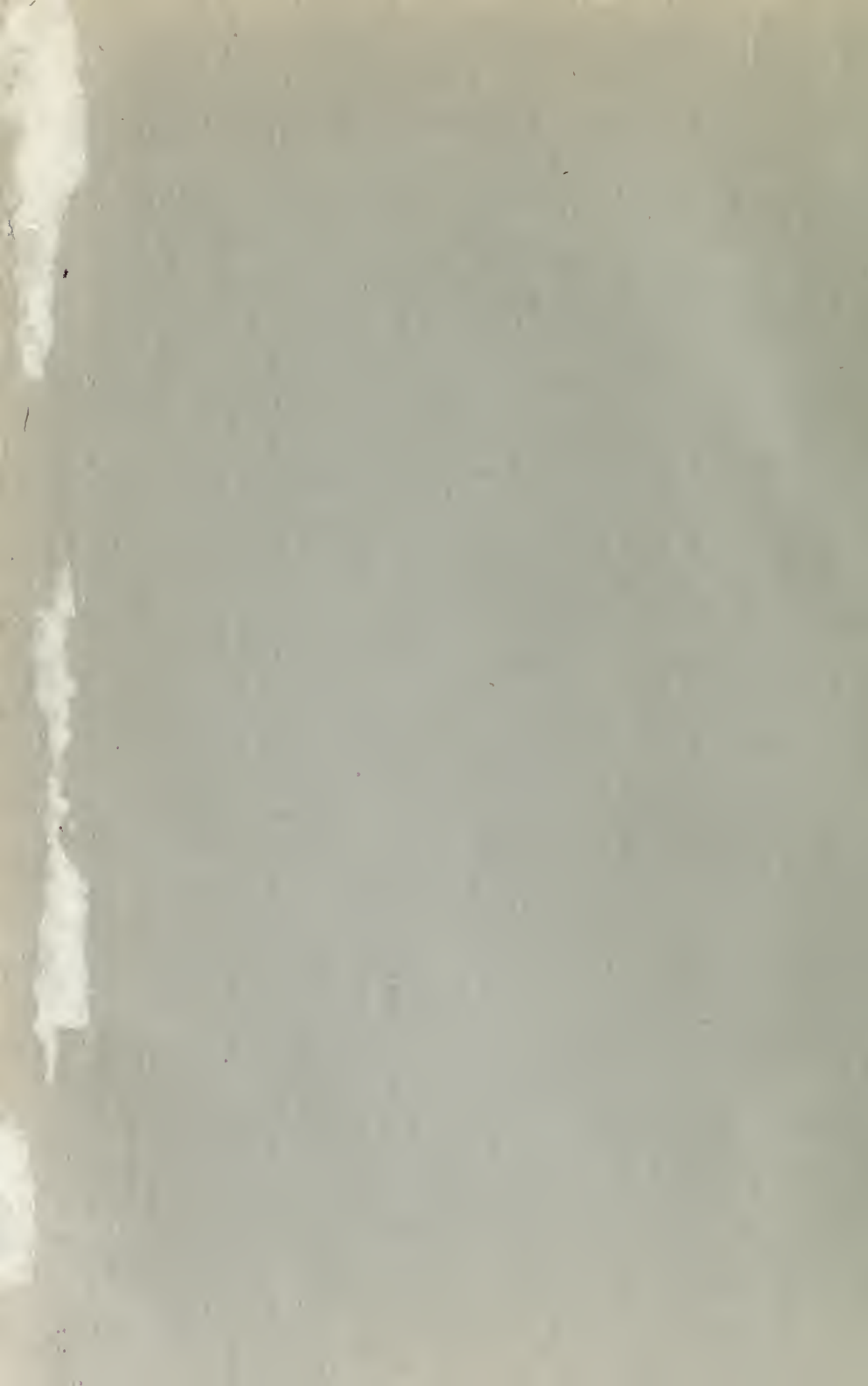
UPON WRIT OF ERROR TO THE UNITED
STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASH-
INGTON, NORTHERN
DIVISION.

Press of Pliny L. Allen Co., Seattle

Filed

JAN 12 1917

F. D. Monckton,
Clerk.



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STATES DISTRICT COURT FOR THE
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INGTON, NORTHERN
DIVISION.

*In the District Court of the United States for the
Western District of Washington. Northern
Division.*

No. 3299

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MELVIN B. MILLER, WILLIAM KIRKLAND,
LOUIS E. LORTIE, HARRY TOY and
LOUIE DING,

Defendants.

NAMES AND ADDRESSES OF COUNSEL.

WILLIAM R. BELL, Esq., Attorney for Defend-
ant and Plaintiff in Error,

1024 L. C. Smith Building, Seattle, Wash.

WALTER S. FULTON, Esq., Attorney for Defend-
ant and Plaintiff in Error,

1112 Hoge Building, Seattle, Wash.

CLAY ALLEN, Esq., Attorney for Plaintiff and
Defendant in Error,

Room 310 Federal Building, Seattle, Wash.

WINTER S. MARTIN, Esq., Attorney for Plain-
tiff and Defendant in Error,

Room 310 Federal Building, Seattle, Wash.

*In the District Court of the United States for the
Western District of Washington. Northern
Division.*

No. 3299

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MELVIN B. MILLER, WILLIAM KIRKLAND,
LOUIS E. LORTIE, HARRY TOY and
LOUIE DING,

Defendants.

INDICTMENT.

*The United States of America, Western District
of Washington, Northern Division, ss.*

The grand jurors of the United States of America, duly selected, impaneled, sworn and charged to inquire within and for the Northern Division of the Western District of Washington, upon their oaths present:

That Melvin B. Miller, William Kirkland, Louis E. Lortie, Harry Toy and Louie Ding, on the first day of October, A. D. One Thousand Nine Hundred and Fifteen, at Seattle, in the Northern Division of the Western District of Washington and within the jurisdiction of this Court, did wilfully, knowingly, unlawfully, feloniously, wickedly and ma-

liciously conspire, combine, confederate and agree together, and together and with divers other persons to these grand jurors unknown, to commit certain offenses against the United States, all as a part of said conspiracy mentioned, to-wit, to violate Section 11 of the Act of Congress of May 6, 1882, as amended and added to by the Act of July 5, 1884, in this: That it was the purpose and object of the said conspiracy and of the said conspirators, and each of them, to wilfully, knowingly, unlawfully, feloniously and maliciously bring into and cause to be brought into the division and district aforesaid, and aid and abet the landing of, by vessel, at Seattle in said division and district aforesaid, in the United States, from Vancouver, in the province of British Columbia in the Dominion of Canada, seven certain alien Chinese persons not lawfully entitled to be or remain in the United States, the names of said seven alien Chinese persons being to these grand jurors unknown; and to violate Section 8 of the Act of Congress of February 20, 1907, as amended, in this:

That it was the purpose and object of the said conspiracy and of the said conspirators, and each of them, to wilfully, knowingly, unlawfully, feloniously and maliciously bring into and land in the United States, at Seattle, aforesaid, by vessel, certain alien persons, who had not theretofore been duly admitted by an immigrant inspector of the

United States, and who were not lawfully entitled to enter the United States or be or remain in the United States at all; the names and a more particular description of said alien Chinese persons being to these grand jurors unknown.

And the grand jurors aforesaid, upon their oaths do further present: That after the formation of said unlawful conspiracy and in pursuance of and to effect the object of said unlawful conspiracy, the said Melvin B. Miller, Louis E. Lortie and William Kirkland on the eighth day of October, A. D. one thousand nine hundred and fifteen, did wilfully, knowingly, unlawfully and feloniously go from Seattle, in the Northern Division of the Western District of Washington and within the jurisdiction of this Court, to Vancouver, in the province of British Columbia in the Dominion of Canada, on board a certain gasoline boat known as the "Maud K."

And the grand jurors aforesaid, upon their oaths do further present: That after the formation of said unlawful conspiracy and in pursuance of and to effect the object of said unlawful conspiracy, the said Melvin B. Miller and William Kirkland did wilfully, knowingly, unlawfully and feloniously receive on board a certain gasoline boat known as "Maud K" seven certain alien Chinese persons, whose names are to these grand jurors unknown, and who were not lawfully entitled to enter

the United States, and then and there navigated, operated and sailed the said boat, "Maud K", from Vancouver, in the province of British Columbia in the Dominion of Canada, to Seattle, in the Northern Division of the Western District of Washington and within the jurisdiction of this Court, which said persons on board said boat arrived in said Seattle on the Tenth day of October, A. D. One thousand nine hundred and fifteen.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT II.

And the grand jurors aforesaid upon their oaths do further present:

That Melvin Miller, William Kirkland, Louis E. Lortie, Harry Toy and Louie Ding on the Tenth day of October, A. D. One thousand nine hundred and fifteen, at Seattle, in the Northern Division of the Western District of Washington and within the jurisdiction of this Court, did then and there wilfully, knowingly, unlawfully and feloniously bring into, and cause to be brought into, the Division and District aforesaid seven certain Chinese alien persons, from the province of British Columbia in the Dominion of Canada, by vessel, and then and there did aid and abet the landing of said

alien Chinese persons from a vessel, to-wit, a gasoline boat then and there named the "Maud K," the names of and a more particular description of said alien Chinese persons being to these grand jurors unknown; which said alien Chinese persons were then and there not lawfully entitled to enter the United States, nor were they entitled to enter the United States at all, nor were they entitled to be or remain in the United States.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

CLAY ALLEN,

United States Attorney.

WINTER S. MARTIN,

Asst. United States Attorney.

Indorsed: Indictment for violation Sec. 37 Penal Code to violate Sec. 11, Act May 6, 1882, as amended, and Act Feb. 20, 1907, Sec. 8. A True Bill. John D. Wenger, Foreman Grand Jury. Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and filed in the U. S. District Court March 29, 1916. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy.

ARRAIGNMENT AND PLEA.

Now on this day into open Court comes the said Defendant Louie Ding for arraignment, accompanied by his counsel Thos. B. MacMahon, and being asked if the name by which he is indicted is his true name, replies "My true name is Louie Tong Ding." Whereupon the reading of the indictment is waived and he here and now enters his plea of not guilty to the charge in the indictment herein against him.

Dated March 30, 1916.

Journal 5, Page 294.

TRIAL.

And now the hour of ten o'clock A. M. having arrived, the plaintiff being represented by W. S. Martin, and the defendant Harry Toy represented by C. F. Riddell, and Louie Ding by T. B. MacMahon and W. R. Bell, the cause is resumed as to trial of defendants Harry Toy and Louie Ding, both being present. The Court proceeds with the selection of jury and the following persons are called: T. H. Ryan, A. A. Swain, John P. Leander, A. B. Robinson, Loren F. White, Sutcliffe Baxter, C. F. Poeppel, John Ash, O. J. Post, Joe Ulrich, F. J. Walsh and J. V. Dyer, twelve good and lawful men duly empaneled and sworn. The defendants move that the Government be required to elect which

count, etc., the cause shall be tried upon, which motion is denied by the Court. On motion of defendants, it is ordered that witnesses for both sides be excluded from the Court Room except while testifying. Opening statement of U. S. Attorney is made to the jury. Defendant Ding moves for severance which is denied. Defendant Ding also moves for dismissal which is denied. Harry Toy moves for dismissal which is denied and motion for severance which is denied. The following witnesses are examined on behalf of the United States: Louis Lortie, Melvin B. Miller, H. F. McGrath, R. Bonham, Thos. M. Fisher and T. W. Smith. And now the hour of adjournment having arrived, by consent of parties it is ordered by the Court that this cause be and is hereby continued until ten o'clock tomorrow morning, and the Court having cautioned the jury in this case they are allowed to separate until that hour.

Dated June 7, 1916.

Journal 5, Page 369.

VERDICT FOR LOUIE DING.

We, the jury in the above entitled cause, find the Defendant Louie Ding is guilty of Count I, and recommend extreme leniency of the Court. Thos. H. Ryan, Foreman.

Indorsed: Verdict. Filed in the U. S. District Court, Western Dist. of Washington, Northern

Division, June 8, 1916. Frank L. Crosby, Clerk.
By E. M. L., Deputy.

MOTION FOR NEW TRIAL.

Comes now defendant Ding and moves the court to set aside the verdict of the jury herein returned on the 8th day of June, 1916, and grant a new trial for the reason and upon the following grounds:

1. That said verdict was against and contrary to law.

2. That said verdict was against and contrary to the evidence.

3. Insufficiency of the evidence to justify the verdict.

4. Errors of law occurring during the trial and excepted to at the time by the said defendant.

5. Erroneous instructions given to the jury by the trial judge.

6. Variance between the indictment and the proof introduced at the time of the trial.

7. Misjoinder of the parties defendant.

8. Misjoinder of separate and independent offenses.

9. Misconduct of the jury.

10. Separation of the jury after submission of the case to them and before verdict.

WILLIAM R. BELL,
Defendants' Attorney.

Received copy of the foregoing and service thereof admitted this 12th day of June, 1916.

Attorney for Plaintiff.

Indorsed: Motion for new trial. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 12, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

MOTION IN ARREST OF JUDGMENT.

Comes now defendant Ding and moves the court to arrest the judgment herein for the reason and upon the following grounds:

1. That the evidence introduced was insufficient to sustain the verdict rendered herein.
2. Variance between the indictment and the proof introduced at the time of trial.
3. Misjoinder of the parties defendant.
4. Misjoinder of separate and independent offenses.
5. Misconduct of the jury.
6. Separation of the jury after submission of the case to them and before verdict.

WILLIAM R. BELL,

Defendant's Attorney.

Received copy of the foregoing and service thereof admitted this 12th day of June, 1916.

Attorney for Plaintiff.

Indorsed: Motion in Arrest of Judgment. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 12, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

HEARING ON MOTION FOR NEW TRIAL.

Now at this time, the Defendant Louie Ding being in open Court, accompanied by his counsel, motions are made for new trial and in arrest of judgment, and the Court after hearing argument of respective counsel denies said motions. The defendant is sentenced and he gives notice of appeal. Supersedeas bond is given in the sum of \$8,000 in cause No. 3282, to cover in this case.

Dated June 12, 1916.

Journal 5, Page 374.

BOND

KNOW ALL MEN BY THESE PRESENTS, That we, Louie Ding, as Principal, and Casualty Company of America, a corporation, organized and existing under and by virtue of the laws of the State of New York, and authorized to transact business of Surety in the State of Washington, as Surety, are held and firmly bound unto the United States of America, Plaintiff in the above entitled action, in the penal sum of Five thousand dollars (\$5,000.00), lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our and each of our heirs, exe-

cutors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the above named defendant, Louie Ding, was on the 12th day of June, 1916, sentenced in the above entitled case No. 3282 to serve a term of two years in the United States penitentiary at McNeils Island in the State of Washington and in addition thereto to pay a fine of Five hundred dollars (\$500.00) and in the above entitled case No. 3299 was on the same date sentenced to serve a term of two years in the United States penitentiary at McNeils Island in the State of Washington, to run concurrently with the sentence in the first mentioned case and in addition to pay a fine of Five hundred dollars (\$500.00) and;

WHEREAS, The said Defendant has appealed from the sentence and judgment in each of said cases to the Circuit Court of Appeals of the United States for the Ninth Circuit; and

WHEREAS, The above entitled court has fixed the defendant's bond, to stay execution of the judgment in both of the said cases, in the sum of Eight thousand dollars (\$8,000.00), of which there is now three thousand dollars (\$3,000.00) in cash on deposit with the registrar of the court;

NOW THEREFORE, If the said defendant, Louie Ding, shall diligently prosecute his said appeals and shall obey and abide by and render him-

self amenable to all orders which said appellate court shall make, or order to be made, in the premises and shall render himself amenable and obey all process issued, or ordered to be issued, by said appellate court herein and shall perform any judgment made or entered herein by said appellate court, including the payment of any judgment on appeal and shall not leave the jurisdiction of this Court without leave being first had and shall obey and abide by and render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable and obey any and all orders issued herein by said District Court and shall pursuant to any order issued by said District Court surrender himself and will obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District Court, then this obligation to be void; otherwise, to remain in full force and effect.

Sealed with our seals and dated this 12th day of June, A. D. 1916.

LOUIE DING,

By W. R. Bell, his Attorney in
Fact.

CASUALTY CO. OF AMERICA,

By C. Summer Best, Resident
Manager and Attorney in fact.

(SEAL)

The foregoing bond is hereby approved this 12th day of June, 1916, and the Marshal of this Court is hereby ordered to release the defendant, Louie Ding, from custody, pending the termination of his appeal and the fulfillment of the conditions of the foregoing bond.

JEREMIAH NETERER, Judge.

WINTER S. MARTIN,
Asst. U. S. Attorney.

Approved this 13th day of June, 1916.

United States District Judge.

Indorsed: Bond. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 13, 1916. Frank L. Crosby, Clerk. By Deputy.

BOND

KNOW ALL MEN BY THESE PRESENTS That we, Louie Ding, as principal, and Casualty Company of America, a corporation, organized and existing under and by virtue of the laws of the State of New York, and authorized to transact business of Surety in the State of Washington, as surety, are held and firmly bound unto the United States of America, Plaintiff in the above entitled actions, in the penal sum of Three thousand dollars (\$3,000), lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas the above named defendant, Louie Ding, was on the 12th day of June, 1916, sentenced in the above entitled case No. 3282 to serve a term of two years in the United States penitentiary at McNeils Island in the State of Washington and in addition thereto to pay a fine of five hundred dollars (\$500.00) and in the above entitled case No. 3299 was on the same date sentenced to serve a term of two years in the United States penitentiary at McNeils Island in the State of Washington, to run concurrently with the sentence in the first mentioned case and in addition to pay a fine of Five hundred dollars (\$500.00); and

WHEREAS The said defendant has appealed from the sentence and judgment in each of said cases to the Circuit Court of Appeals of the United States for the Ninth Circuit; and

WHEREAS The above entitled Court has fixed the defendant's bond, to stay execution of the judgment in both of the said cases, in the sum of Eight thousand dollars (\$8,000.00), of which there is now on file in said Court a bond in the sum of Five thousand dollars (\$5,000.00), bearing date the 12th day of June, A. D. 1916, with the aforesaid Casualty Company of America as surety thereon;

NOW THEREFORE If the said defendant, Louie Ding, shall diligently prosecute his said appeals and shall obey and abide by and render himself amenable to all orders which said appellate

court shall make, or order to be made, in the premises and shall render himself amenable and obey all process issued, or ordered to be issued, by said appellate court herein and shall perform any judgment made or entered herein by said appellate court, including the payment of any judgment on appeal and shall not leave the jurisdiction of this court without leave being first had and shall obey and abide by and render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable and obey any and all orders issued herein by said District Court and shall pursuant to any order issued by said District Court surrender himself and will obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District Court, then this obligation to be void; otherwise to remain in full force and effect.

Scaled with our seals and dated this 19th day of June, A. D. 1916.

LOUIE DING,
CASUALTY CO. OF AMERICA,
By C. Summer Best, Resident
Manager and Attorney in fact.

(SEAL)

The foregoing bond is hereby approved this 19th day of June, 1916.

JEREMIAH NETERER,
United States District Judge.

Within bond approved this 23d day of June, 1916.

WINTER S. MARTIN,
Asst. U. S. Attorney.

Indorsed: Bond. Filed in the U. S. District Court, Western Dist, of Washington, Northern Division, June 23, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

**OPINION OF COURT
ON OBJECTION TO COMPETENCY OF WITNESS—OB-
JECTION SUSTAINED.**

CLAY ALLEN,
U. S. Attorney for Government,
WINTER S. MARTIN,
Asst. U. S. Attorney, for Government,
CHARLES F. RIDDELL,
W. R. BELL,
For Defendant.

NETERER, District Judge:

The Government having offered Mr. Kirkland as a witness, and the defendant objecting to the witness being sworn and permitted to testify, on the ground that he does not believe in the existence of a God who is the rewarder of truth and the avenger of falsehood, the witness was interrogated as to his belief, and he stated, "I believe there is a Creator, a cause for all that we see and all that we hear." He does not believe that there is a God who re-

wards truth and avenges falsehood, and says, "I think a man gets all his punishment in this world while he is here." And in reply to a question by counsel for defendant—"As a matter of fact your belief is that the punishment you receive in this world comes from yourself and from the men in the world. A. Yes. Q. And not from God? A. No, I don't think it comes from God."

In reply to an inquiry as to whether the taking of an oath meant anything to the witness he shook his head and said it did not mean a great deal to him, and "I think I could tell the truth if I never took an oath."

Under the common law rule a person who does not believe in a God who is the rewarder of truth and the avenger of falsehood cannot be permitted to testify; *Thurston v. Whitney et al.*, 2 Cushing (Mass.) 104; Jones on Evidence, Blue Book, Vol. 4, Sec. 712-13.

District Judge Wilkin, 1 Fed. Cases, 446, held that the testimony of an atheist is not admissible.

In *U. S. v. Lee*, Fed. Cases 15,586, Circuit Court of the District of Columbia, it was held that a man who does not believe in the existence of a God other than nature or in a future state of existence is not a competent witness.

In *Wakefield v. Ross*, 28 Fed. Cases, 17,050, District of Rhode Island, it was held that a person who does not believe in the existence of a God or in a

future state of existence is not a competent witness, and cited *Scott v. Hooper*, 14 Vermont, 530, and *Thurston v. Whitney, supra*. The rigidity of this rule has been somewhat relaxed, and a person has been permitted to testify who believed in the existence of a God who was the rewarder of truth and the avenger of falsehood, either in this or a future life. This rule did not necessarily imply that a person had to subscribe to his belief in the Christian religion. If a person believes in the existence of a God who rewards truth and avenges falsehood, either in this or a future life, it is immaterial whether that belief is in accordance with the Christian belief or not. Any religious belief, whatever it may be, which recognizes the usual form of oath administered as invoking Deity to witness its truthfulness, and recognizes that falsehood will be punished, is sufficient.

I know of no cases that will permit a person to qualify as a witness who does not subscribe to some religious belief recognizing a Supreme Being, and who is not moved or impressed by some conscientious scruple with relation to the testimony in its truthfulness or falsity to be rewarded or avenged in this life or some future life. *State v. Wash.*, 42 L. R. A. (O. S.) 553, and cases cited. And if our form of oath is not binding upon persons of other religious beliefs, the form which is recognized as binding can be administered. A Jew may be sworn

on the Pentateuch or Old Testament, with his head covered, a Mohammedan on the Koran, a Gentoo touching with his hand the foot of a Brahmin or priest of his religion, a Chinese by breaking a china saucer. Wharton Criminal Evidence, Vol. 1 Sec. 354.

Section 1, Article II of the Constitution of the State of Washington, provides that "No religious qualification shall be required for any public officer; nor shall any person be incompetent as a witness or juror in consequence of his opinion on matters of religion; nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony." Section 858 of the Revised Statutes of the United States provides that "The laws of the State in which the court is held shall be the rule of decision as to the competency of witnesses in the courts of the United States in trials at common law and in equity and admiralty." The common law consists of those principles, maxims, usages and rules founded on reason, natural justice and an enlightened public policy, deduced from universal and immemorial usage, and receiving progressively the sanction of the courts. Common law is generally used in contra distinction to statute law, *Levy v. McCartee*, 31 U. S., 6 Peters, 102. There are no common law crimes in the United States as a unit, as recently held by the Supreme Court of the United States, and *In re Green*, 52 Fed. 104. In the

various states the common law as recognized is by no means universal, *Patterson v. Winn*, 30 U. S., 5 Peters, 233. The term "common law" is used in our statute to distinguish it from criminal actions. It was held in *Kirby v. C. & N. W. R. Co.*, 106 Fed. 551, that within the meaning of the Act of March 31, 1887, Chapter 373, Sec. 1, 24 St. 552, Section 1, providing that courts of the United States shall have original cognizance of all suits of a civil nature at common law or in equity, the expression "common law" is used to distinguish it from a criminal action. The Supreme Court, in *Logan v. U. S.*, 144 U. S., at page 300, clearly limits the application of the expression "at common law" used in Section 858 *supra*, when it says:

"By the Judiciary Act of September 24, 1789, c. 20, Sec. 34, it was enacted 'that the laws of the several states, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply.' 1 Stat. 92. Although that section stood between two sections clearly applicable to criminal cases, it was adjudged by this court at December term, 1851, upon a certificate of division of opinion of the Circuit Court, directly presenting the question, that the section did not include criminal trials, or leave to the States the power to prescribe and change from time to time the rules of evidence in trials in the courts of the United States for offences against the United States."

This case has not been overruled or modified.

The Circuit Court of Appeals for this Circuit, in *Cohen v. U. S.*, 214 Fed., at page 28, says:

“The competency of witnesses in criminal trials in the Courts of the United States is not governed by the statute of the State, but by the common law, except where Congress has made specific provisions on the subject.”

My attention has been called to the expression of the Supreme Court in *Crawford v. U. S.*, 212 U. S. 183, but this case, when taken with what is said by the Supreme Court in *Logan v. U. S.*, *supra*, cannot have any weight upon this issue.

I see no other course than to sustain the objection.

Bill of Exceptions, Pages 264-268.

Indorsed: Opinion on Objection to Competency of Witness. Filed in the U. S. District Court, West. Dist. of Washington, Northern Division, June 7, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

**ORDER EXTENDING TIME TO JULY 22ND, 1916, FOR
SIGNING. ALLOWANCE AND FILING OF
BILL OF EXCEPTIONS.**

Now on application of the defendants for an order extending the time for the signing, allowance and filing of the bill of exceptions herein, and cause being shown therefor, such application is granted and the time for the signing, allowance and filing of the bill of exceptions of the defendant is

extended up to and including the 15th day of July, 1916.

Done in open court this 30th day of June, 1916

JEREMIAH NETERER, Judge.

Indorsed: Order Extending Time for Signing, Allowance and Filing Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 30, 1916. Frank L. Crosby, Clerk.

BILL OF EXCEPTIONS.

BE IT REMEMBERED that this cause came on regularly to be heard on this the 3rd day of June 1916, before the Hon. Jeremiah Neterer, one of the judges of the above entitled court, sitting with a jury duly empaneled and sworn, the plaintiff being represented by Clay Allen and Winter S. Martin, Esq., United States District Attorney and Assistant United States District Attorney, respectively; and the defendant Harry Toy, being represented by Messrs. Jones & Riddell, Hugh Todd and Paul Carrigan, Esq.; and the defendant Louie Ding, being represented by Thomas B. MacMahon and William R. Bell, Esq.; whereupon a trial was had and testimony offered and taken and proceedings had and done, of which the following are excerpts. That it has been stipulated that the following portions of said proceedings and testimony are the only portions thereof that defendant Louie Ding shall be required to incorporate in the printed record

on his appeal herein:

In his opening statement to the jury, the United States District Attorney made the following statement:

“Now, gentlemen of the jury, upon those two counts of the indictment, the Government expects to show you, and prove to you by witnesses on the witness stand, that these three white men, Lortie, Miller and Kirkland, operated at the suggestion of the two Chinese defendants for the purpose of bringing in the seven Chinese aliens who were subsequently brought in.

Kirkland was the owner of the boat, ‘Maud K’, and kept his boat out here at Ballard. The ‘Maud K’ is a launch twenty-five or thirty feet long, able to go safely and comfortably to Vancouver, and to bring back the Chinese aliens. That Kirkland had a long acquaintance with Miller, and had a considerable acquaintance with the defendant Lortie and that Lortie had an acquaintance with Louie Ding, and Kirkland had an acquaintance of some standing with Harry Toy, the defendant, these two Chinese. That Lortie suggested some time shortly before the conspiracy, to Kirkland that he was going after some boys, as they term them, and the proof will show that they generally referred to these Chinese as “boys,” and Lortie made the suggestion that he had some boys, that he had

some avenues of influence, and that he could get some boys to bring in, and the proof will show the price for the entry, for the bringing in of these boys, or aliens, was one hundred, or one hundred and twenty-five dollars a head, and that the white men provided for the bringing in of these Chinese at that rate per head.

That Lortie told the co-defendant, Kirkland, that he had such an arrangement and would like to make a trip, and Kirkland acquiesced in it, and agreed that it was a good venture to go into, and that they planned together.

Kirkland then introduced the subject to Miller, and Miller had very little acquaintance with these Chinese, and very little acquaintance with that business, but Miller joined in the business on that suggestion, and went on Kirkland's boat.

The next meeting was held at Ballard between Kirkland and Lortie and a day or two later they all met at the dock at Ballard and Miller was present. They made their arrangements to go away on the trip; filled their tanks with oil, and prepared to leave Seattle for Vancouver. The plan was for the Chinese to give certain letters or credentials to the white men, and the white men to take those Chinese credentials to Vancouver, and deliver them to the Chinese addressee of the letter, or to the per-

son to whom the letter was directed. They were to make that call in Vancouver and deliver these letters for the purpose of identifying the white men. Upon the receipt of the letters by the Chinese in Vancouver, who were assisting the Chinese in Seattle, it was their business to deliver the Chinese to the white men, who in turn would bring them back on their boat, and help them into the United States. So that, in this case, following that plan, the letters were given by the Chinese to the defendants. The conspiracy in this case was formed first by the three white men going together, into which conspiracy came Ding and Toy. There is no connection between Ding and Toy. They were operating for their own purpose. Ding entered it for his own purpose, and Toy entered it for his. Ding and Toy came into the conspiracy then. The defendant Ding gave Lortie certain letters in Chinese for the purpose of having Lortie deliver the same letter to another Chinese in the city of Vancouver. The defendant, Harry Toy, did likewise, not in the same presence, and not at the same time, but operating in the same common purpose. He gave a letter for the two Chinese, a letter to his confederate and friend in Vancouver. The white men had two letters. Lortie had the letter from Ding, and Kirkland had the letter from Toy, and with these letters in their pockets they sailed from

Seattle, or rather, I should say, they went temporarily to Anacortes, and Lortie joined them at Anacortes; Miller and Kirkland took the boat to Anacortes, and Lortie got on the boat that night at Anacortes, and they all went to Vancouver on the gasoline boat, the 'Maud K.' Arriving in Vancouver they docked the boat, or anchored it near the shore on the outskirts at the gravel pit, near the golf links, on English Bay. I believe there is a car line goes out there from the city. They went into the city. Lortie going to the Chinese he was going to, and Kirkland went to the Chinese at 1902 Pender Street, and that Kirkland, in order to perfect the object of this conspiracy, went to the Chinese on Pender Street, and secured, or made arrangements for the delivery of two Chinese boys, or men, of the excluded class, that is, two Chinese laborers, to enter upon his boat and come down here. And Lortie took his letter up to another place in town and delivered it to one Louie, a Chinese whom he knew, and whom he had had some dealings with before, and pursuant to the delivery of that letter, which I believe contemplated the delivery of eight Chinese boys, only five were delivered. Five Chinese came down in one party, and two came down in the other. Having placed them on board the boat, Lortie left the party and returned by other means of convey-

ance to the city of Seattle, coming, I believe, on one of the Canadian Pacific Railroad boats. Miller and Kirkland with the Chinese on board, navigated across from Vancouver to the city of Seattle. They landed here at the foot of Harrison Street in the city of Seattle and Lortie was here in the city waiting to receive them. Lortie received a telephone call from the defendant Kirkland, after he had disposed of the two Chinese to the defendant Toy; and that we will show was done under the following circumstances. * * * After Toy had received the two Chinese and walked off with them, Kirkland went away and went upon First Avenue, and then telephoned his friend Lortie, to send his man down for the five Chinese who still remained, and Lortie then came to the boat and received the five Chinese and piloted them through the city.”

Here counsel for plaintiff closed his opening statement and then:

MR. BELL: (attorney for defendant Louie Ding):

“In view of the opening statement of counsel for the Government, we demand on behalf of the defendant Ding a severance of the trial. That statement shows that there were, if any, two independent conspiracies, one entered into by the defendant Ding and the white defendants, Lortie and Kirkland, and the other, a

separate and distinct transaction entered into between the defendant Toy and the same white defendants. And there is not any reason that I can conceive of why these two independent conspiracies should be tried before the same jury, and why the defendant I represent should be bound or be affected by testimony against the other defendant with whom we are not charged with having any connection and with whose conspiracy we have no connection. As I take it, conspiracy means a common purpose, a confederation for the purpose of consummating some common purpose or some common end, and the opening statement made to the jury discloses that there was no such conspiracy. The statement shows that there was an alleged conspiracy between Ding and two of the white men as to some things, and another conspiracy between Toy and the other defendants as to other matters, and no connection whatever between these two defendants, Toy and Ding.

THE COURT: The motion is denied. Proceed.

MR. BELL: We will ask for an exception.

Mr. RIDDELL: (Attorney for defendant Harry Toy). Your Honor, I think the motion counsel just made is a more serious one than counsel has shown to the court.

THE COURT: I understand the seriousness of it.

MR. RIDDELL: I know, Your Honor, but I think it is sufficiently serious that we are entitled at this time to a dismissal of this action. The indictment is supposed to allege only one crime and if it alleges more than one crime it is duplicitous and the demurrer to the indictment should have been sustained. If the indictment alleges one crime, the proof cannot be on two, and either of the defendants found guilty and that makes no difference whether it is on the conspiracy count or whether it is on the other count of the indictment. In the statement of counsel he said in so many words that Ding had no connection with Toy and that Toy had no connection with Ding, and if we assume that that is true Your Honor could not instruct this jury that they might find all the white defendants guilty and the other defendants not, because counsel in his opening statement tells the jury these men had no connection with each other, so far as the conspiracy count was concerned. So far as the other count is concerned you cannot charge the defendants with bringing in seven Chinese, one bring two, and the other five. While five and two make seven in arithmetic, they do not in an indictment, and you cannot add two crimes together to make one total, and we are entitled to a dismissal. I am going to ask the court to dismiss the case as to the defendant Toy.

THE COURT: The motion is denied.

MR. RIDDELL: Then I renew my motion for a severance at this time.

THE COURT: The motion is denied.

MR. RIDDELL: We will ask for an exception to both.

THE COURT: Very well, proceed.

MR. BELL: In order to complete the record. I now move that the present action be dismissed as to the defendant Ding, and the defendant discharged from custody. This is based on the indictment and on the opening statement of counsel for the Government.

THE COURT: The motion is denied.

MR. BELL: We will ask for an exception."

Bill of Exceptions, pages 153-158.

The defendant Lortie, called as a witness by the Government, testified, *inter alia*, as follows:

"Q. (By Mr. Bell, attorney for Louie Ding.) Now, did you ever talk to Mr. Kirkland about Louie Ding in connection with this smuggling proposition?

A. No sir.

Q. Did Louie Ding know about Kirkland from you?

A. Yes sir, I believe he did. I think we talked about Kirkland.

Q. You think you talked about Kirkland?

A. It seems to me we did.

Q. What was the reason you talked to Louie Ding about Kirkland in connection with this smuggling expedition? Explain that to the jury.

A. Louie Ding explained to me that Kirkland had brought two Chinamen in. He didn't call him by name. He may have, too, but I know he mentioned the one armed Chinaman.

Q. What was the reason you talked with Louie Ding about Kirkland in connection with this smuggling expedition? Explain that to the jury.

A. Louie Ding told me that Kirkland would cause me trouble.

Q. Did you and Louie Ding have anything to do with Kirkland's deal with this other one armed Chinaman that you spoke of?

A. No sir.

Q. That was entirely independent then, with your deal with Louie Ding?

A. Yes, he knew nothing about that as far as I was concerned.

Q. Did you tell Louie Ding about these other Chinamen being brought over by Kirkland for Harry Toy?

A. I told Louie Ding that Kirkland had brought two Chinamen.

Q. Did you tell him that before or after?

MR. RIDDELL: This whole transaction is one with which we are not concerned, and I want it

understood that my objection goes to all of this.

THE COURT: I understand that. Proceed.

Q. (Mr. Bell): That was after you returned, and you told him that Kirkland brought a batch of Chinamen for some one else.

A. Yes sir.

Q. You didn't tell him that before you went to Vancouver?

A. No sir.

Q. He knew nothing whatever about that?

A. No sir."

Bill of exceptions 183-85.

The defendant Miller was on the stand as a witness for the government and testified as follows:

"Q. (By Mr. Bell, attorney for Louie Ding): Mr. Miller who was it that first spoke to you, or suggested to you first that you join in on this smuggling expedition? Was it Mr. Lortie?

A. No sir, Mr. Kirkland.

Q. Then it was with Kirkland that you went in on this deal?

A. Yes sir.

Q. And not with Lortie?

A. No sir.

Q. And you hadn't had any talk with Louie Ding about going into this particular expedition, had you?

A. No, I was going after two sets of Chinamen.

Q. You learned that from Lortie?

A. Yes.

Q. And you learned that on the boat?

A. Yes.

Q. And your arrangements were made with Kirkland?

A. Yes, on Mr. Toy's case.

Q. And not with Lortie on the Ding case. That was Lortie's venture wasn't it?

A. Yes.

Q. And you had nothing to do, and Kirkland had nothing to do with that, had you?

A. Well, we was all together.

Q. You were all together in the same boat, I understand that, but you and Kirkland were in the deal to smuggle Chinamen for Harry Toy, weren't you?

A. Yes sir.

Q. And Lortie was in the deal to smuggle Chinamen for Louie Ding.

A. Yes sir."

Bill of exceptions 216-217.

These were the only witnesses who testified upon this subject. The defendant Kirkland being rejected as a witness by the court upon the motion of the defendant Harry Toy. At the close of the government's case a motion was interposed for a directed verdict on behalf of each of the defendants Louie

Ding and Harry Toy and after argument was granted as to the defendant Toy and denied as to the defendant Louie Ding and exception allowed to this ruling, in favor of the defendant Ding.

In connection with the motion for a directed verdict on behalf of the defendant Louie Ding the following proceedings were had:

MR. RIDDELL (Attorney for Harry Toy): "I want first to strike the alleged declaration of the co-conspirators who have not been connected with the defendant Harry Toy by a *prima facie* case, and secondly, I move the court for a dismissal of the action on the ground that with that stricken out, or even with that in, there is not sufficient evidence to go to the jury.

There is a third proposition in here, which I don't know how fully it has come to the attention of the court, or how much your Honor has considered it, as the case has gone in, but a foundation has been laid for the present situation.

If the theory of the government is correct, Louie Ding was interested in the importation of five Chinese. If the theory of the government is correct, Harry Toy was interested in the importation of two men and the witness Lortie testified that he had no connection with Toy and the only man he knew in the case was Louie Ding until he went to Anacortes, or Van-

couver, and there found out for the first time that there were two other men in the transaction. There is absolutely no connection between the defendant Harry Toy and the alleged two men, and Ding, with his alleged five men. Now the indictment in the case charges a single crime. Then if there are two crimes, there is a failure of proof, and the defendants are entitled to a dismissal. There are a great many authorities on the point.

THE COURT: Well, now, we cannot entertain any presumptions against the defendant in the trial of a criminal case. The defendant is presumed to be innocent. If any presumption is indulged in, the presumption would not go beyond the testimony which shows that he was present and perhaps, would be that he was there or went there not for a wrongful purpose. If the defendant was charged and on trial for aiding and abetting the landing of Chinese, the testimony would be sufficient. That would be the completed offense. But the gist of this action is the conspiracy; it is not the bringing in; it is not the doing of anything other than the overt acts which are simply establishing the gist of the action or accusation, which is a conspiracy, and under these conceded facts I don't see how, in fact, and there is not in my judgment, anything on which the defendant could be held, or on which the court could

submit this to the jury, under the testimony which is presented. I think the motion to dismiss as against the defendant Toy must be sustained.

MR. RIDDELL: Mr. Bell and I have consulted concerning the other points to which I made reference regarding the indictment charging two alleged offenses, and as a courtesy to Mr. Bell, I would ask the court to consider that second motion as having been made on his behalf as attorney for the defendant Louie Ding, also.

THE COURT: Yes, and the motion is denied; note an exception.

Bill of exceptions, pages 273, 294, 295.

This was all the evidence in the case, and at its conclusion, the defendant again renewed said motion in writing, as above printed, to direct a verdict in his favor, and after the argument of counsel, both of the plaintiff and defendant to the court upon said motion, and also to the jury upon said motion, and also to the jury upon said case upon its merits, the said motion was by the court in its charge to the jury, overruled, and to which action of the court in overruling the same, the defendant then and there, by permission of the court, excepted."

Bill of exceptions, pages 344, 345.

Several witnesses were introduced by the Government and testified in reference to the kind or character of Chinese alleged to have been transported by the defendants from British Columbia to Seattle, as follows:

The defendant Louie E. Lortie, called as a witness in behalf of the Government, testified, *inter alia*, as follows, on direct examination:

“Q. (By Mr. Martin, Assistant District Attorney): How long have you known Ding?

A. Oh, not very long, a year, probably * * *

Q. Do you know the defendant Kirkland in this case?

A. I do.

Q. Do you know the defendant Miller?

A. I do.

A. Kirkland came and asked me if I would help him get a load of Chinamen, so I went down to see Louie.

THE COURT: When you say ‘Louie,’ give the name.

A. Mr. Ding; and he said he would give me a letter to a friend in Vancouver. I could not get the letter that day and I told Kirkland I would get the letter later.

Q. Mr. Lortie, before leaving the interview with Ding, that day, tell me what Ding said, and what

the letter was for, and all that you said to him, and all that he said to you.

A. He told me he would get a letter, and he did not know how many he would get.

Q. How many what?

A. How many Chinamen.

Q. What else did he say? What was the letter for?

A. He said he would give me a letter to get eight.

Q. Eight what?

A. Eight Chinamen.

Q. Where?

A. In Vancouver, and that was about all. There was nothing more said, and I was to come back the next day. In the mean time, I went and told Kirkland I didn't get the letter, and I met him in Ballard.

Q. Had you the letter then?

A. No. I told him I could not go with him and he wanted to go because it was nice weather, and I said, 'You go on ahead, and I will catch you in Anacortes,' and he went away.

Q. Was Miller present at the interview between you and Kirkland?

A. Yes, Kirkland introduced Miller to me there that day.

Q. I asked you one question before that, how

long you had known Miller, what did you mean to answer in that connection?

A. Well, I lost track of Mr. Miller for several years, and, of course, I did not know who Kirkland was going to introduce me to, until that day, but, of course, when I met Miller that day, I recognized him, and told him I had known him for years. So Miller and Kirkland went down and I waited until that night, and I got the letter from Louie, and I took the 'Kulshan.'

Q. Before leaving that interview in which you received the letter, tell me all that Ding said to you concerning the letter, and during the interview?

A. Well, he did not say very much, only that he thought I would get eight, eight Chinamen.

Q. To whom was the letter directed or addressed?

A. To a man by the name of Louie.

Q. Describe the letter. What kind of a letter was it? Was it in an envelope? Describe the letter, or paper, as near as you can?

A. Well, I am not very positive of that letter, or whether it was in English or Chinese. I think it was in English, the number of it, and it called for Louie.

Q. It called for Louie?

A. Yes.

Q. Was it in an envelope?

A. I believe there was a Chinese letter, but I didn't see the letter, but Louie, in Vancouver, his nephew showed it to me.

Q. You saw the contents of the letter at the time of delivery?

A. Yes.

Q. And what was that? Did you see the letter delivered?

A. Yes.

Q. Then there was a letter in the envelope?

A. Yes.

Q. What else did Ding say at the time of the delivery of the letter?

A. He just told me to write the number on the envelope in English. It was on Carroll Street, and the number I don't remember, but I know it was on Carroll Street.

Q. How much were you to receive for the bringing in of the Chinese?

A. A hundred dollars.

Q. For how many?

A. Well, I wasn't positive, but I was to get eight.

Q. I mean, a hundred dollars would bring in how many Chinese?

A. A hundred dollars apiece.

Q. A hundred dollars apiece for eight Chinese?

A. Yes sir.

Q. Where did you receive the letter, in this city?

A. I think so; I know it was in the Milwaukee Hotel, known as the gambling house, in the office about the gambling house. I don't know the number.

Q. Do you know where Louie Ding's place of business is?

A. Well, that is the place.

Q. It is Louie Ding's place of business?

A. Yes. * * *

Q. Is that in Chinatown in the city of Seattle?

A. Yes sir.

Q. After receiving the letter what did you then do?

A. I took the ten o'clock boat that night.

Q. For where?

A. Anacortes. I was to meet Kirkland and Miller.

Q. And did you go to Anacortes?

A. Yes sir.

Q. And what did you do then?

A. I found them there in Anacortes. I went with them to Vancouver, and when we got to Vancouver—

Q. Well, how did you go to Vancouver?

A. We went on Kirkland's boat.

Q. What was the name of the boat?

A. The "Maud K".

Q. Describe the boat briefly, and its dimensions?

A. It is between twenty and twenty-five feet long, and seven feet beam. A boat with a mast, and a Regal gasoline engine.

Q. Capable of going how fast?

A. Not very fast, maybe seven miles an hour.

Q. And capable of accommodating how many people?

A. You could crowd in about ten.

Q. It is a cabin boat?

A. Yes sir.

Q. And did you go on this boat to Vancouver?

A. Yes sir.

Q. Who went with you on the boat to Vancouver?

A. Mr. Miller and Mr. Kirkland.

Q. Arriving in Vancouver, what did you do?

A. I went to Carroll Street and to this particular number, I cannot remember the number. But I met this man Louie there.

Q. Had you any previous acquaintance with Louie?

A. No, I asked for Louie.

Q. You asked for him?

A. Yes, and he was rooming there in the back, and he came outside and talked with me on the street, and then we went the back way—

Q. What did this man Louie say?

A. He told me he would gather the boys up. He told me up to his room he would gather the boys up.

Q. How many boys?

A. He could not get eight. He only got five.

Q. What arrangements did you make with him for the delivery of these boys, or men?

A. I was to deliver them to Louie Ding.

Q. What did you do immediately at that time with the men, pursuant to your talk with the Vancouver Louie?

A. Well, as near as I can recollect, I introduced Mr. Kirkland to him, and Kirkland told us that he had two, and that he would get the two, and he told me it was on Pender Street. I think it was 19½ Pender Street. And he went and got his two. He told me he got the two already.

Q. And what was done with them?

A. I took care of the other five. They came down on a street car, I believe. I met them at the end of the street car line, and I took them down to the boat, and put them on the boat, and shortly after, Kirkland came down with his two.

Q. And were they placed on the boat?

A. Yes sir.

Q. Do you know who these Chinese people were, or what their business was?

A. No, not their particular business. I know they were coming over here to America.

Q. Were they the laboring class of Chinese, do you know?

A. Well, I could not say.

Q. You knew they were coming to the United States?

A. Yes. Some of them seemed to be pretty intelligent, and others were not.

Q. What did Kirkland and Miller then do, if you know?

A. I left them there and took the steamer, and told them I would come on ahead and when they got in I would take the five off, and Kirkland told me his man would come down to the boat and take care of them.

Q. What did you do upon your arrival in Seattle?

A. I went home.

Q. Did you after that receive any information of any sort from Miller or Kirkland?

A. Yes. I received a telephone from Kirkland.

Q. What did he say?

A. He asked me to come down to the boat.

Q. Where was the boat?

A. At the foot of Harrison Street.

Q. And what else did he say to you, if anything?

A. There wasn't much said.

Q. After you received Kirkland's telephone call, what did you then do?

A. I went down to the boat and I got the five Chinamen.

Q. When you arrived at the boat what time of the evening was it, do you remember.

A. No, I don't remember. It was dark.

Q. What time in the month, and when, did this meeting at the foot of Harrison Street, at this landing, take place?

A. As near as I can recollect it was some time in October.

Q. Of what year?

A. 1915.

Q. Last year?

A. Yes sir.

Q. And was it after dark?

A. Yes sir.

Q. And you cannot remember the date of the month?

A. No, I cannot.

Q. What did you see on arriving at the foot of Harrison Street? Where was the boat, and where were these several persons?

A. The boat was anchored, and I just met Mr. Miller there.

Q. Where was Kirkland?

A. Kirkland hadn't got down yet.

Q. Did you see him there?

A. I did, before I got away.

Q. Did you see any of Kirkland's Chinese?

A. No.

Q. How many Chinese, if any, did you see on arriving at the boat?

A. Just the five.

Q. Just the five?

A. Yes sir.

Q. Did you have any talk with Miller?

A. Yes. Miller told me that Kirkland had been down and got his Chinamen.

Q. What did you do then?

A. I took the five and went on up as far as the Milwaukee Hotel on a vacant lot on the west side of the Milwaukee Hotel.

Q. How did you go from Harrison Street to the Milwaukee Hotel?

A. I walked.

Q. With the Chinese?

A. Yes.

Q. And showed them the way?

A. When I got there, I left them standing outside and I went in to Louie Ding's place, and couldn't find Louie Ding, and China Dan came out and took care of them.

Q. And you delivered them to him?

A. I was to deliver them to Louie, but I could not find Louie.

Q. By Louie, you mean Louie Ding, the defendant?

A. Yes. So, I got China Dan, and he said he would take care of them.

Q. Did you deliver the five Chinese to him?

A. Yes sir. I introduced them to him, and I showed him where they were and he talked Chinese to them, and I left them in his care.

Q. Did you see Ding or any of these Chinese that you brought in after that, or China Dan?

A. Yes.

Q. When, and under what circumstances?

A. I seen them afterwards in a flat on Main Street, at 1037.

Q. You say you met Dan and Ding afterwards at the flat at 1037 Main Street. How long was that after the night of the arrival of the Chinese?

A. A couple of nights after. A couple of days after.

Q. What time of the day?

A. In the evening.

Q. Who was present at the meeting?

A. China Dan and Louie.

Q. The defendant, Louie Ding?

A. Yes sir.

Q. Is that China Dan the same man you referred to a moment ago?

A. Yes sir.

Q. The man to whom you delivered the five Chinese?

A. Yes sir.

Q. Were there any other Chinese persons present?

A. I could not say. I don't remember.

Q. Were there any of the co-defendants, Worthington or Miller?

A. Mr. Miller wasn't present.

Q. Did Mr. Miller see you at the flat?

A. Yes sir.

Q. How many meetings took place at the flat?

A. Oh, probably a week later, Mr. Miller and I went over to the flat.

Q. Is that the same place, 1037 Main Street?

A. Yes sir.

Q. What time of day was that?

A. That was in the evening.

Q. And who was present during that interview?

A. Mr. Miller and I, and Louie.

Q. Do you remember whether China Dan was present or not?

A. No.

Q. Do you remember, or was he not there?

A. I don't remember.

Q. Was anything done or said on this occasion

concerning the five Chinese you had delivered to China Dan?

A. Yes sir. I received some money.

Q. State everything that was said and done on that occasion?

A. Well, Louie owed me two hundred dollars yet, and he paid me that two hundred dollars on my five Chinamen.

Q. Had you received any money before that?

A. Yes.

Q. When?

A. The first time I met him.

Q. At the first interview you met him?

A. Yes.

Q. And that was at the flat?

A. Yes.

Q. And how much did you receive at the first interview after you had delivered the Chinese?

A. Three hundred dollars.

Q. And on this later occasion you received two hundred?

A. Yes.

Q. Who paid you the money?

A. Louie.

Q. In what denomination was the money, what kind of money was it?

A. Gold.

ON CROSS EXAMINATION.

Q. (By Mr. Bell, attorney for Louie Ding): Did Kirkland know you were in the business?

A. I don't know.

Q. And you say it is not a fact that you were the one that suggested to Kirkland that he join you in this venture?

A. I could not say which one. We talked about it.

Q. I thought you told Mr. Martin that Kirkland came to you and told you that he was going to take some boys across, some Chinamen, and wanted you to go in with him. That is what you said to Mr. Martin, isn't it?

A. No.

Q. When was this that you had the talk with Ding about bringing over eight Chinamen?

A. Early in October.

Q. And when was it you told him, on your visit to the flat, after you got back, or where were you when you told him about the other two Chinamen?

A. In the flat on Main Street.

Q. And that was after you had delivered the Chinamen to China Dan?

A. Yes sir.

Q. And it was after you had received part of your money?

A. Yes sir.

Q. Where were you when you received the first three hundred dollars?

A. I could not swear to that, whether it was in the gambling house, or at the flat. I am not positive, but I know I received it because I know he owed me two hundred dollars more.

Q. How soon after you delivered the five Chinamen to China Dan was it that you received the three hundred dollars?

A. It was several days afterwards."

See Bill of exceptions, pages 161 to 179, inc., and pages 185, 186.

The defendant Melvin B. Miller, called as a witness in behalf of the Government, testified, *inter alia*, as follows:

ON DIRECT EXAMINATION.

"Q. (By Mr. Martin, Assistant District Attorney): And do you know the defendant Lortie in this case?

A. Yes sir.

Q. And the defendant Kirkland?

A. Yes sir.

Q. And the defendant, Harry Toy?

A. Yes sir.

Q. And the defendant, Louie Ding?

A. Yes sir.

Q. Did you ever have anything to do with this conspiracy to smuggle the Chinese mentioned in this indictment?

A. I did.

Q. When did you first have any connection with these men, and this conspiracy, and what was it?

A. I don't just rememebr the date, but I was in the Louvre Bar, and Mr. Kirkland came in and asked me whether I wanted to make a piece of money, and I told him I did. * * *

A. We left the saloon and went down on a launch and went to Vancouver. * * *

Q. Did you meet Lortie that night or before that at any time?

A. I met Lortie in Ballard.

Q. On the night you left?

A. On the morning we left. We met Lortie in the morning and that evening we left for Vancouver.

Q. Where did the meeting take place between yourself and Lortie?

A. Right by the City Dock there.

Q. Where was Mr. Kirkland at that time?

A. He was there.

Q. Was he present during the interview?

A. He introduced me to Lortie.

Q. What did Lortie or Kirkland say on that occasion?

A. Well, they made arrangements to go to Vancouver to get some Chinamen.

Q. What did Lortie say?

A. Lortie said he had a letter for eight.

Q. From whom?

A. From Mr. Ding.

Q. For eight what?

A. Eight Chinamen.

Q. For eight Chinamen?

A. Yes sir.

Q. And what did Mr. Kirkland say as to any letters he had?

A. Mr. Kirkland didn't say anything to Lortie at the time, but Mr. Kirkland told me he had an order for two.

Q. From whom?

A. Mr. Toy.

Q. Mr. Toy, the defendant, Harry Toy?

A. Yes sir.

Q. When did Lortie tell you that?

A. Lortie didn't tell me that.

Q. I mean, when did Kirkland tell you that?

A. On the trip going over.

Q. What was Lortie to get for his Chinese?

A. One hundred a head.

Q. What was Kirkland to get for his?

A. A hundred and twenty-five.

MR. RIDDELL: I think counsel should ask for what was said and done. Counsel is practically testifying.

THE COURT: He may state what was said and done.

Q. (Mr. Martin): State everything that Lortie said about his Chinese, and about Ding, and about everything that was said?

A. They just talked on the trip over, they were trying to keep it a secret from each other, that one had a certain party and the other had a certain party, and they wanted to keep it from each other.

Q. Lortie told you about his Chinamen and Kirkland told you about his Chinamen?

A. Yes, Lortie told me about his Chinamen, and Kirkland told me about his Chinamen.

Q. Were you shown any letters, or were they exhibited by the men?

A. Yes.

Q. What letters do you refer to?

A. I refer to the letter Lortie had from Ding.

Q. Did you examine it, or read it?

A. No, I didn't examine it, or read it.

Q. And Lortie had received a letter from Ding?

A. Yes sir.

Q. Now, what, if anything, did Kirkland say about his Chinese?

A. Kirkland had a letter from Vancouver, I

saw the letter, but I didn't see him open it. He showed me the letter.

Q. State what Kirkland told you about his Chinese, or about the letter?

A. He said he had two Chinamen to bring over for Harry Toy and was to get a hundred and twenty-five dollars apiece for them.

Q. Did you later on that day leave Seattle and go anywhere?

A. We was in Ballard, we all got up in the morning, I don't remember whether it was the 5th, or 6th, and the next morning Lortie came out and we left that evening, and went to Anacortes, and landed there, and stayed all night in Anacortes.

Q. You went to Anacortes in a boat, did you?

A. We went to Anacortes on a launch.

Q. What launch?

A. The 'Maud K.'

Q. Mr. Kirkland's launch?

A. Yes sir.

Q. What did you do there?

A. We stayed there until the next morning.

Q. What did you then do?

A. We went up town and had something to eat, and got down and went on the boat and went to Vancouver.

Q. And arriving in Vancouver, what was done?

A. We arrived in Vancouver about seven o'clock

in the morning, and I stayed on the launch, and Kirkland went up town, and that evening Mr. Kirkland, he brings two boys down, and put them on board, and then Mr. Lortie brings five down and puts them on board. I never went up town at all.

Q. What kind of persons were these who were put on board?

A. Chinamen.

Q. What kind of Chinamen?

A. What kind of Chinamen?

Q. Yes.

A. Just ordinary Chinamen, as near as I know. Chinese.

Q. Do you know whether they were Chinese laborers or not?

MR. BELL: We object to that as suggestive and leading.

A. I suppose they were.

THE COURT: It is leading. Just state what was said.

A. I supposed they were laboring Chinamen. They looked like.

MR. BELL: I move that be stricken. He says he supposed.

THE COURT: Let the answer be stricken as to what he supposes.

MR. MARTIN: He says they looked like Chinese laboring men.

A. They were very poorly clad, you know.

MR. MARTIN: Do I understand that the witness's answer stands that they looked like Chinese laborers?

THE COURT: The remark that they looked like laborers, should be stricken in view of the motion.

MR. MARTIN: Just a moment. May not the witness testify to the appearance of the Chinese?

THE COURT: Yes, he may state what he saw.

MR. MARTIN: What did you do after the Chinese were placed on board at Vancouver.

A. After the Chinese were placed on board at Vancouver we pulled out of Vancouver about eight or nine o'clock at night, and Mr. Lortie was to take the boat, the Vancouver large boat from there to Seattle, and Mr. Kirkland and I pulled out to about the lightship, and it got rough, and we turned back and we didn't leave until about ten o'clock the next morning, and then we came across.

Q. Did you stop anywhere en route to Seattle?

A. We stopped, I think, at Orcas Island and camped there from four o'clock in the evening, until nine or ten o'clock the next morning.

Q. Did the Chinese go ashore at all?

A. No.

Q. Where did you go when you arrived in Seattle, and what did you do?

A. We landed at the foot of Harrison street, and Mr. Kirkland got off the boat and he went up town, and Mr. Lortie came into the boat. Before that Kirkland took his two boys ashore, you see, and he goes up town, and the seven of them was on shore, and Kirkland brings Mr. Toy and some other Chinamen down and takes the two boys away, and Mr. Lortie comes down and takes the other five away.

Q. And what did you do?

A. I went back on the boat and went to sleep.

Q. Where were the Chinese delivered; what part of the city?

A. I could not tell you as to that.

Q. I mean where did you land?

A. We landed at the foot of Harrison street.

Q. You landed at the foot of Harrison street in this city?

A. Yes, sir.

Q. Following the arrival on that evening, did you at any time see any of those Chinamen that were brought down on the boat with you, that were brought down on your launch? Did you see any of those Chinese after that?

A. Yes, sir.

Q. Where and under what circumstances?

A. I saw them at 1037 Main street.

Q. And what was the occasion of seeing them there? Who else was present?

A. I went there with Mr. Lortie to collect some money from Mr. Ding, and Mr. Ding paid him two hundred dollars in gold.

Q. Who else was there besides Mr. Ding?

A. China Dan and Louie Lewis.

Q. Who?

A. That little Chinaman who was on the stand not long ago.

Q. You mean Louie Lung Gin.

A. Yes, Louie Lung Gin.

Q. How many Chinese were there?

A. Three or four.

Q. How many of those did you recognize as Chinese you had seen before?

A. All that was there.

Q. Were those the Chinese that had been brought down on the boat?

A. Yes, sir.

Q. What did Ding and Lortie say when this money was paid?

A. There was a balance to be paid, I forget how much it was. * * *

ON RE-RE-DIRECT EXAMINATION.

Q. (By MR. MARTIN, District Attorney)
“What was done and said by Kirkland, if anything, when he came down with the man whom you know was Toy?

A. Well, they asked for the boys. The boys were laying along on the rocks, and they got up, and they appeared to know Mr. Toy, or they shook hands with each other.

Q. And what did Kirkland say to Toy at that moment, or in his presence, or while he was there?

A. I could not say what was said. They all went off together."

See bill of exceptions, pages 208 to 215, inc. and 229.

The foregoing is all of the testimony introduced by the Government upon this question.

MR. RIDDELL: (Attorney for Harry Toy) Do I understand you want to put both Ding and Toy on trial at the same time?

MR. MARTIN: (United States District Attorney) Yes.

MR. RIDDELL: I want to move for a severance at this time. I understand that the only two defendants on trial at this time before this jury are the defendants Toy and Ding?

MR. MARTIN: Yes.

MR. RIDDELL: I want to move for a severance at this time.

THE COURT: What is the reason; on what ground?

MR. RIDDELL: The reason I want to move

for a severance is very plain, and will be very plain to your Honor, if your Honor considers for a moment. The jury which is about to be impanelled has already passed upon another case with which we have nothing to do, and in which we had absolutely no opportunity to examine any witness or take any part in the proceedings, and the defendant Ding is now put on trial with us and we are brought into this thing together with him, at the same time. The facts in this case are, we have nothing to do with him, don't know him in the transaction, never heard of him, and the placing of us on trial with this man, cannot help but be prejudicial.

THE COURT: I think you are a little apprehensive before there is any occasion for it.

MR. RIDDELL: I suppose your Honor will compel us to join in the challenges. Under the present circumstances, in view of the present situation he may have his preference on account of what has occurred, which would be absolutely foreign to our interests.

MR. MARTIN: I might suggest that the United States Circuit Court in cases well known to counsel and also to the court, as your Honor recalls held that separate trials would not be granted even in a murder case, even where they are jointly charged; I just mention that.

THE COURT: I don't see where the court

would be justified, Mr. Riddell, in granting a severance.

MR. RIDDELL: I do not know at the present time what the testimony in the case may develop, but will say there may be situations which would render it exceedingly prejudicial to us to be dragged in here with somebody else in this way. I want to make my motion—

THE COURT: Motion denied.

MR. RIDDELL: Save an exception, your Honor.

THE COURT: Note it. * * *

(Bill of Exceptions 2 and 3).

* * * * *

THE COURT: The defendants' first peremptory challenge?

MR. BELL: At this time, before starting in on the peremptory challenges on behalf of the defendant whom I represent I desire to inquire of the Court whether we will be permitted to have for that defendant the number of peremptory challenges allowed us by the statute, which is ten in number?

THE COURT: The defendants will join in the challenges, and have the number which the statute gives.

MR. RIDDELL: We will be required to join?

THE COURT: Yes.

MR. RIDDELL: We desire to exercise our ten independently of the other defendants in the case.

THE COURT: No, you have ten in all; you will exercise them together.

MR. BELL: We will take an exception.

MR. RIDDELL: We desire to exercise ours independently of the other defendant; there is absolutely no community of interest; no connection whatever.

THE COURT: I have nothing to do with the law or an indictment, simply have to take them as we find them. The law provides the challenges that are allowed to a defendant, and when there are several defendants they unite and join in the challenges. Proceed.

MR. RIDDELL: Your Honor, we must both agree on the person we desire to challenge?

THE COURT: Yes.

MR. RIDDELL: I desire to preserve my exception to your Honor's ruling. Your Honor is undoubtedly correct.

THE COURT: Yes.

MR. RIDDELL. We will excuse Mr. Manca.

* * *

THE COURT: Defendant's second peremptory challenge.

MR. RIDDELL: Excuse Mr. Robinson.

* * *

THE COURT: Defendants' third peremptory challenge.

MR. BELL: We excuse Mr. Newfang.

* * *

THE COURT: The defendants' fourth peremptory challenge.

MR. RIDDELL: Excuse Mr. Hughes.

* * *

THE COURT: The defendants' fifth peremptory challenge.

MR. BELL: We will excuse Paul Myhra.

* * *

THE COURT: The defendants' sixth peremptory challenge.

MR. RIDDELL: We will excuse Mr. Sackett.

* * *

THE COURT: The defendants' seventh peremptory challenge.

MR. BELL: The defense will excuse Mr. Alexander.

* * *

THE COURT: The defendants' eighth peremptory challenge.

MR. RIDDELL: Excuse Mr. Wilmot.

* * *

THE COURT: The defendants' ninth peremptory challenge.

MR. BELL: We will excuse Mr. Daly.

* * *

THE COURT: The defendants' tenth and last challenge.

MR. RIDDELL: We will excuse Mr. Elfendahl.

(See Bill of Exceptions, pp. 71 to 135).

MR. RIDDELL: Before the jury is sworn, I want to make a statement to your Honor. I don't want to make it in the presence of the jury. It is a matter of law that concerns the court alone, and I don't want to prejudice the jury against the Government, and I think it is only fair to tell the court that the jury should be excluded.

THE COURT: (addressing the jury) You may retire from the court room. (The jury then retired.)

MR. RIDDELL: In this case we have asked for a severance, which the court has declined, and we have asked the court to allow us ten challenges on each side, that is, for each defendant, and the court has made us join in our challenges. The result has been that the attorneys representing Louie Ding have challenged five, and we have challenged five, and we desire to exercise another peremptory challenge against the juror, Mr. Dyer. Your Honor has already intimated the result of the ruling, and I do not desire the jury to be prejudiced by the naming of any particular juror in this matter, although I assumed that your Honor would rule against us.

THE COURT: Is there any objection on the part of the Government?

MR. MARTIN: Yes, your Honor.

THE COURT: The request is denied.

MR. RIDDELL: We desire to save an exception against your Honor's ruling.

MR. BELL: We make the same request.

THE COURT: The request is denied.

MR. BELL: We will ask for an exception also."

(Bill of Exceptions, 146-147).

MR. MARTIN: (United States District Attorney) "I will call Mr. Kirkland.

MR. RIDDELL: Before this witness is sworn, I want that question passed upon that I raised this morning.

MR. MARTIN: I offer Mr. Kirkland as a witness and I ask that he be administered the oath.

MR. RIDDELL: We want a preliminary inquiry on the objection we made this morning.

THE COURT: What is the objection?

MR. RIDDELL: The objection is that the witness does not believe there is a Supreme Being who will reward or punish him for his acts in this world, either in this world or the next, and consequently the oath lacks the sanctity of an oath to him, and I have the testimony here, to proceed with the preliminary inquiry which the law requires in the matter.

MR. MARTIN: Do you care to hear from me, your Honor? If the Court please, at the early common law, it may have been adhered to, but in more recent times the common law—but in more recent times I have never heard of the procedure outlined, or suggested by counsel, that before the witness becomes a witness, that the court is going to interrupt the trial and listen to the triers of that fact. It is usual to swear the witness. That has been my experience, and qualify him, and if the witness believes in the sanctity of an oath, his own statement, as to that fact, is the very best evidence, and I call your Honor's attention to the frequency with which Chinese testify. It is a known fact that the Chinese do not believe in our God, but believe in Confucius and Buddha and other pagan Gods, and yet they believe in the sanctity of an oath, and I think this witness should not be disqualified if he believes in the sanctity of an oath. A witness can affirm if he believes in the pains and penalties of perjury, that is sufficient.

THE COURT: Mr. Kirkland, do you believe in a God and a future state of reward or punishment?

A. Why, I believe there is a Creator, a cause for all that we see, and all that we hear.

Q. And one who rewards truth and punishes falsehood?

A. Well, I don't know about that.

Q. Neither in this world or the next?

A. I think a man gets all his punishment in this world, while he is here.

Q. Do you believe in the existence of a Supreme Creator?

A. I believe there is something, but I am not convinced what it is.

Q. A Supreme Being?

A. A Supreme Being, or Creator, or whatever has caused us to be here.

Q. And you believe that that Creator, or Being, in which you believe rewards truthfulness, and punishes falsity?

A. Well, your Honor, to be frank with you, I think you get your punishment on earth.

Q. I don't care where you get it. I am just asking you whether you believe there is a Supreme Being who does reward those who speak the truth, either in this life, or some life hereafter, or who punishes those who speak falsely either in this life, or hereafter?

A. I don't believe there is any reward, or any punishment, hereafter.

Q. You will answer my question. I asked whether you believe there is a Supreme Being who rewards or punishes in this life or hereafter?

A. It is in this life.

Q. Do you believe there is a reward or punish-

ment in this life, a reward for those who speak the truth, and punishment for those who speak falsely?

A. Yes, they get along nice and everything is better for them if they speak the truth.

MR. RIDDELL: I don't mean any disrespect to your Honor, but I want to object to your Honor taking the examination out of my hands, and I make this most respectfully. The Court has taken the matter out of the hands of the attorney.

THE COURT: The Court is the person who must be satisfied and who should conduct the matter, and it may be so recorded in the record.

MR. RIDDELL: I assume I will be permitted some questions when your Honor has finished.

THE COURT: Let me ask this question again. Do you believe, or do you disbelieve, in the existence of a God who is the rewarder of truth and the avenger of falsehood, either in this life or in the hereafter. Now, you can answer that directly?

A. Why, I cannot come to believe that a man is rewarded or punished in the hereafter. I believe that there is a Creator and a cause for all of us.

Q. I have told you to answer my question, and you evade it. I asked directly and very pointedly, whether you did believe in the existence of a God who is the rewarder of truth and the avenger of falsehood either in this life or hereafter?

A. Well, I believe a man is rewarded in this life, as I said before.

Q. And you believe he is avenged in this life for falsity?

A. Yes, if he speaks false, it is only a matter of time until he is in trouble. I believe a man can tell the truth just as well without an oath as with it. I know that I can.

Q. Do you place any sanctity in an oath?

A. Yes, I believe you have to have something like that if a man is a God-fearing man, as they call it, to make him appreciate the seriousness of what he is doing.

Q. Are you God-fearing?

A. I don't think so.

Q. Then do you believe in the sanctity of an oath?

A. Yes, I believe a man can tell the truth.

Q. Why do you believe in the sanctity of an oath?

A. I don't know as I can answer that satisfactorily. I believe when a man holds his hand up to the Creator, or whoever it may be that is the cause of our existence here, that he should tell the truth.

Q. Well, suppose he does not?

A. Well, his conscience should prick him enough to cause him considerable anguish and punishment, I think.

Q. Do you want to ask any questions, Mr. Riddell?

MR. RIDDELL: Mr. Kirkland, as a matter of fact, your belief is, that the punishment, you say comes in this world comes from yourself and the men in the world?

A. Yes.

Q. And not from God?

A. No, I don't think it comes from God.

MR. RIDDELL: That is all.

MR. MARTIN: Do you believe that your punishment lies in your own conscience or from a conscious existence of a Supreme Being?

A. Yes.

MR. MARTIN: I submit there is many a religious man whose belief does not extend beyond that and is a good citizen.

THE COURT: It is not a question of citizenship.

MR. RIDDELL: It is purely a question of law.

THE COURT: You said awhile ago, and your last answer does not coincide with the answer you gave awhile ago, that you believe there is a Supreme Being that does avenge falsehood.

A. There may be.

Q. But do you believe there is? That is what I want to know, whether you believe there is?

A. I am doubtful.

THE COURT: It is recognized in this and all religious countries a man must recognize a Supreme

Being who does avenge falsity, and a man cannot stand out on his own initiative.

MR. MARTIN: But Chinese who take the stand repeatedly do not believe in our God.

THE COURT: But they have a God in which they do believe.

MR. MARTIN: But he says he believes in a Supreme Being.

THE COURT: I have asked him repeatedly.

MR. MARTIN: I would like leave to examine the witness further.

THE COURT: You may propound further questions.

Q. (By Mr. Martin) You said in answer to the Court's question you believe in punishment by your own conscience?

A. Yes, sir.

Q. You believe that that punishment is due to the existence of a Supreme Being acting through your conscience?

A. There is something, I don't know what it is.

Q. And that Supreme Power, acting through your conscience, leads you to believe that it is better to tell the truth because of the results which may follow?

A. It may follow, yes, I don't know,—

Q. And because it will follow—

MR. RIDDELL: Let him finish his answer.

MR. MARTIN: You have no right to interrupt.

THE COURT: Let him finish his answer. Proceed.

A. I don't know what the hereafter is.

THE COURT: We are not asking you about that. I am asking the condition of your mind at the present time as to your belief in a future state?

A. Just as I have told you as I have already told you, I believe there is a Creator, or a cause for us existing here, which any reasonable man would know, but what it is, I don't know. I doubt all their religious ways they have of knowing who the man is.

THE COURT: I don't care anything about that.

A. Or who the Being is, or what it is.

THE COURT: I simply wanted to know if your conscience is affected by the realization and appreciation that there is a Supreme Being that overrules and directs your conscience, and that is what I want to know. And that your either favorable or unfavorable conduct in this life will be rewarded or avenged hereafter.

A. I don't think that you are rewarded or avenged in the hereafter.

THE COURT: Do you think you are in this life?

A. I believe that a man is. His good acts in

this life will show among his fellow men, and he will get along a great deal better, and he is rewarded in other ways. I think if a man is good he will be rewarded with good, and if he is bad he is punished by this rule on this earth.

MR. MARTIN: And punished by reason of a Creator, or Supreme Being which controls the Universe?

THE COURT: And that belief in you, is that emphasized or modified in any way by the sanctity of an oath, strengthened in any way by the sanctity of an oath?

A. I think that a man—

THE COURT: Oh, no, not that a man, do you feel that holding up your hand and swearing before God that you will tell the truth, the whole truth, and nothing but the truth, does that mean anything to you?

A. It don't mean a great deal to me. I think I can tell the truth if I never took an oath.

Q. I don't care anything about that. I don't believe you can establish this witness, Mr. Martin, under the rule of common law.

MR. MARTIN: I would like to be heard on that, because one court in Milwaukee held that the qualifications of a witness were those of common law, yet the Supreme Court held that a person convicted of a felony could testify, while in the McKesley case, they held that it could not be done.

THE COURT: Before coming to a conclusion on this, I haven't gone through the subject, but you will find it discussed in the Second Cushing Massachusetts, and you will find it also in the 14th American State Reports—

MR. MARTIN: The Courts in modern times have come to this, and this question is frequently put, "do you appreciate the pains and penalties of perjury?" Take the case—

THE COURT: Don't interrupt. Just a moment, Mr. Martin I said I would hear you, when you look into the matter. I will withhold final conclusion on this until I hear from you.

(Bill of Exceptions 200 to 207).

(See page 16 *supra* for ruling of court.)

MR. BELL: (Attorney for Louie Ding) I will call William Kirkland, this witness is under subpoena, and we wish to call him in behalf of the defendant Louie Ding.

MR. MARTIN: The witness is William Kirkland, whom your Honor held this morning to be disqualified.

THE COURT: Call the next witness.

MR. BELL: We desire to have him here and offer him as a witness.

THE COURT: If he is the same witness tendered by the Government, and the Court declined to receive him, unless the Government agrees, I will not allow him to testify.

MR. BELL: Let the record show that we offer him for the defense.

MR. MARTIN: We will object to his being sworn.

THE COURT: Let the record show that this is the same witness tendered by the Government, and the defense objected and the Court sustained the objection, and declined to allow him to testify.

MR. BELL: He was not challenged by the defendant, Louie Ding.

THE COURT: He was challenged by the defendant Harry Toy.

MR. BELL: We did not join in that challenge and we desire to offer him as a witness, and we will take an exception to your Honor's ruling to not allow him to testify.

THE COURT: Note an exception.

Bill of Exceptions, pp. 325-6.

The jury retired to consider their verdict, and having returned into court a verdict against the defendant Louie Ding, afterwards, on, to-wit: the 12th day of June, 1916, the defendant Louie Ding by his attorney moved the court to set aside said verdict and grant a new trial, which said motion was in form as follows:

“UNITED STATES OF AMERICA,

vs.

MELVIN B. MILLER, WM. KIRKLAND,
LOUIE E. LORTIE, HARRY TOY AND
LOUIE RING,

No. 3299

“Comes now the defendant Ding and moves the court to set aside the verdict of the jury herein returned on the 8th day of June 1916, and grant a new trial for the reasons and upon the following grounds:

1. That said verdict was against and contrary to law. II. That said verdict was against and contrary to the evidence. III. Insufficiency of the evidence to justify the verdict. IV. Error of law occurring during the trial and excepted to at the time by the said defendant. V. Erroneous instructions given to the jury by the trial judge. VI. Variance between the indictment and the proof introduced at the time of the trial. VII. Misjoinder of the party defendant. VIII. Misjoinder of separate and independent offenses.

WILLIAM R. BELL,
Attorney for Defendant”

which said motion for a new trial was, after arguments by counsel for and against the motion respectively, and after due consideration by the court, on the 22nd day of June 1916, overruled.

And now, in furtherance of justice, and that right may be done the defendant, Louie Ding, tenders and presents the foregoing as his bill of exceptions in this case to the action of the court, and prays that the same may be settled and allowed and signed and sealed by the court and made a part of the record, and the same is accordingly done this, the 1st day of September 1916.

JEREMIAH NETERER,

Judge.

(Bill of Exceptions, 358-361.)

STIPULATION.

It is stipulated by and between the plaintiff in the above entitled cause, and the defendant Louie Ding through their respective attorneys, that the foregoing, being those portions of the original bill of exceptions herein which support the defendants' assignment of errors, is all of the original bill of exceptions that need be incorporated in the printed record on appeal.

Dated at Seattle, this 13th day of November, 1916.

CLAY ALLEN and WINTER S. MARTIN,
Attorneys for Plaintiff.

WALTER S. FULTON and WM. R. BELL,
Attorneys for Defendant Louie Ding.

Indorsed: Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, North-

ern Division, Dec. 14, 1916. Frank L. Crosby, Clerk.
By Ed M. Lakin, Deputy.

PETITION FOR WRIT OF ERROR.

To the Honorable JEREMIAH NETERER,
Judge of the District Court aforesaid:

Now comes the defendant Louie Ding, by his attorneys, Walter S. Fulton and W. R. Bell, and respectfully shows that on the 2nd day of June, 1916, a jury duly impanelled herein found your petitioner guilty of criminal conspiracy and upon said verdict a sentence was passed and final judgment was entered against your petitioner on the 12th day of June, 1916.

Your petitioner feeling himself aggrieved by said verdict and judgment entered thereon as aforesaid herewith petitions the court for an order allowing him to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit under the laws of the United States in such cases made and provided.

WHEREFORE, premises considered, your petitioner prays that a writ of error be issued and that an appeal in this behalf to the Circuit Court of Appeals aforesaid, situated in San Francisco in said Circuit, for the correction of the errors complained of and herewith assigned, be allowed, and that an order be made approving the bond heretofore furnished by your petitioner and staying all further

proceedings until the determination of said writ of error by the said Circuit Court of Appeals, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

WM. R. BELL and
WALTER S. FULTON,

Attorneys for Defendant Louie Ding.

Indorsed: Petition for Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 8, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*United States District Court, Western District of
Washington, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MELVIN B. MILLER, WILLIAM KIRKLAND,
LOUIE E. LORTIE, HARRY TOY and
LOUIE DING,

Defendants.

No. 3299

ORDER ALLOWING WRIT OF ERROR.

NOW on this 8th day of November, 1916, came the defendant Louie Ding, and by his attorneys Walter S. Fulton and W. R. Bell, filed herein and presented to the court his petition, praying for the allowance of a writ of error intended to be urged

by him, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises; and that an order be made approving the bond heretofore furnished by the defendant Louie Ding and staying all further proceedings until the determination of said writ of error by the said Circuit Court of Appeals.

NOW, on consideration of said petition and being fully advised in the premises, the Court does hereby allow the said writ of error.

And it is hereby ordered that the security heretofore furnished by the defendant Louie Ding for his appearance whenever required according to the conditions of his bond, is hereby approved, and all further proceedings are hereby suspended herein until the determination of said writ of error by the said Circuit Court of Appeals.

And it is further ordered that the defendant Louie Ding shall be released from custody pending the hearing and determination of said writ of error.

JEREMIAH NETERER,

Judge of the United States District Court for the Western District of Washington, Northern Division.

Indorsed: Order Allowing Writ of Error.

Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 8, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

ASSIGNMENT OF ERRORS.

Now comes the defendant Louie Ding and in connection with his petition for writ of error in this cause assigns the following errors which said defendant avers occurred on the trial thereof and upon which he relies to reverse the judgment entered herein, as appears of record.

I.

That the court erred in overruling the motion of the defendant Louie Ding for a separate trial, which motion was made immediately after the opening statement by the attorney for the plaintiff and before the introduction of any evidence, the said opening statement disclosing that the facts relied upon by the plaintiff for a conviction would establish two separate and distinct conspiracies, one entered into by the defendants Toy and Kirkland and the other entered into by the defendants Ding and Lortie. Due and timely exception was taken to the action of the trial court in overruling the defendant Ding's motion for a severance.

II.

The court erred in overruling the motion of the defendant Louie Ding for a directed verdict made

at the close of the evidence introduced by the government in support of the indictment, which motion was based upon the following several grounds:

a. Improper joinder of two separate and distinct felonies;

b. Insufficiency of the evidence to establish any conspiracy between the defendant Ding and the other defendants.

c. Insufficiency of the evidence to establish that the Chinese alleged to have been transported from the city of Vancouver, B. C. to the city of Seattle, belonged to a prohibited class of aliens;

d. That the alleged conspiracy to import alien Chinese had been consummated and merged into the substantive offense of importing aliens.

III.

The court erred in overruling the motion of the defendant Louie Ding for a directed verdict of acquittal made at the close of the entire case and before it was submitted to the jury which motion was based upon the following grounds:

a. Improper joinder of two separate and distinct felonies;

b. Insufficiency of the evidence to establish any conspiracy between the defendant Ding and the other defendants;

c. Insufficiency of the evidence to establish that the Chinese alleged to have been transported from

the city of Vancouver, B. C. to the city of Seattle, belonged to a prohibited class of aliens;

d. That the alleged conspiracy to import alien Chinese had been consummated and merged into the offense of importing aliens.

IV.

The court erred in requiring the two defendants on trial, Harry Toy and Louie Ding to divide between them the number of statutory peremptory challenges, for the reason that there was no connection between the said defendants, and the offenses alleged to have been committed by them were separate and distinct felonies.

V.

The court erred in permitting a number of jurors, over the objection of the defendant Louie Ding, who had sat as trial jurors in the case immediately preceeding the one on trial, in which the United States of America was plaintiff, and the defendant Louie Ding was one of the defendants and in which the issues and the evidence were identical with this case to be impanelled and sworn in this cause.

VI.

The court erred in refusing to permit William Kirkland to testify when called as a material witness on behalf of the defendant Louie Ding.

VII.

The court erred in denying the motion of the defendant Louie Ding for a new trial, which motion was made in due time, after the jury had returned a verdict of guilty as charged in the first count of the indictment, upon the following grounds:

(1) That said verdict was against and contrary to law; (2) That said verdict was against and contrary to the evidence; (3) Insufficiency of the evidence to justify the verdict; (4) Error of law occurring during the trial and excepted to at the time by the said defendant; (5) Erroneous instructions given to the jury by the trial judge; (6) Variance between the indictment and the proof introduced at the time of the trial; (7) Misjoinder of parties defendant; (8) Misjoinder of separate and independent offenses; (9) Misconduct of the jury; (10) Separation of the jury after submission of the case to them and before verdict.

VIII.

The court erred in denying the motion of the defendant Louie Ding in arrest of judgment, which motion was made in due time after the jury had returned a verdict of guilty as charged in the first count of the indictment, upon the following grounds:

(1) That said verdict was against and contrary to law; (2) That said verdict was against and contrary to the evidence; (3) Insufficiency of the evi-

dence to justify the verdict; (4) Error of law occurring during the trial and excepted to at the time by the said defendant; (5) Erroneous instructions given to the jury by the trial judge; (6) Variance between the indictment and the proof introduced at the time of the trial; (7) Misjoinder of parties defendant; (8) Misjoinder of separate and independent offenses; (9) Misconduct of the jury; (10) Separation of the jury after submission of the case to them and before verdict.

IX.

The court erred in imposing a sentence upon the defendant Louie Ding to serve a term of two years in the United States penitentiary at McNeil's Island in the State of Washington and pay a fine of five hundred dollars.

WHEREFORE, defendant Louie Ding prays that the judgment of said court be reversed and this cause remanded to the said District Court with directions to dismiss the same and discharge said defendant from custody and exonerate the sureties on his bail bond.

WALTER S. FULTON and
W. R. BELL,
Attorneys for Defendant Louie Ding.

Filed this 8th day of November 1916.

Clerk of the United States District Court for the
Western District of Washington, Northern Division.

Indorsed: Assignment of Errors. Filed in the U. District Court, Western Dist. of Washington, Northern Division, Nov. 8, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

**ORDER EXTENDING TIME TO FILE TRANSCRIPT OF
RECORD.**

NOW, upon this 6th day of December 1916, comes on to be heard the motion of the defendant Louie Ding for an order extending the time to file the transcript of the record herein, the said defendant appearing through his counsel, and the United States of America appearing through its counsel and consenting to such order,

It is, therefore, hereby Ordered that the time heretofore allowed in which to file the transcript of the record herein in the United States Circuit Court of Appeals for the Ninth Circuit, be and the same hereby is extended to the 15th day of January 1917.

Done in open court this 6th day of December 1916.

JEREMIAH NETERER,
Judge.

We censure to the entry of the above order.

CLAY ALLEN and
WINTER S. MARTIN,
Attorneys for Plaintiff.

Indorsed: Order Extending Time To File
Transcript of Record. Filed in the U. S. Dist.

Court, Western Dist. of Washington, Northern Division, Dec. 6, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

STIPULATION AS TO RECORD.

It is hereby stipulated between the plaintiff and the defendant Louie Ding, through their respective attorneys, that the following designated papers comprise all of the papers, exhibits and other proceedings which are necessary to the hearing of this cause upon writ of error to the United States Circuit Court of Appeals for the Ninth Circuit and that none but said papers need be included in the records of said court:

Indictment.

Plea.

Impanelling of jury.

Verdict.

Motion for new trial.

Motion in arrest of judgment.

Order overruling motion for new trial, and motion in arrest of judgment.

Bond.

Opinion of court.

Bill of exceptions.

Petition for writ of error.

Assignment of errors.

Allowance for writ of error.

Writ of error.

Citation on writ of error.

Order extending time for serving and filing bill of exceptions.

Order extending time for filing record.

Stipulation as to record.

Clerk's certificate.

It is also stipulated that the original exhibits herein may be attached to the record by the Clerk and transmitted to the Circuit Court of Appeals and the same need not be printed. In preparing the printed record all captions, except upon Writ of Error, Citation on Writ of Error and Order Allowing Writ of Error, may be omitted.

CLAY ALLEN and WINTER S. MARTIN,
Attorneys for Plaintiff.

WALTER S. FULTON, and
WM. R. BELL,

Attorneys for Defendant Louie Ding.

Indorsed: Stipulation as to record. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 14, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD.

United States of America, Western District of Washington—ss.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify that the foregoing 89 printed pages numbered from 1 to 89, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as are necessary to the hearing of said cause on Writ of Error therein in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on return to said Writ of Error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the Plaintiff in Error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to-wit:

Clerk's fee (Sec. 828 R. S. U. S.), for making record, certificate or return, 192 folios at 15c	\$28.80
Certificate of Clerk to transcript of record, 4 folios at 15c60
Seal to said Certificate.....	.20
Certificate of Clerk to original Exhibits 3 folios at 15c45
Seal to said Certificate.....	.20
Statement of cost of printing said transcript of record, collected and paid.....	125.00
Total.....	<hr/> \$155.25

I hereby certify that the above cost for preparing and certifying record amounting to \$155.25, has been paid to me by Messrs. Wm. R. Bell and Walter S. Fulton, Attorneys for Plaintiff in Error.

I further certify that I hereto attach and herewith transmit the original Writ of Error and original Citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 9th day of January, 1917.

FRANK L. CROSBY,

(Seal)

Clerk of U. S. District Court.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

LOUIE DING,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

No. 3299

WRIT OF ERROR.

United States of America, Ninth Judicial Circuit.—
ss.

THE PRESIDENT OF THE UNITED STATES
OF AMERICA:

To the Honorable Judge of the District Court
of the United States for the Western District of
Washington, Northern Division:

Because in the record and proceedings, as also
in the rendition of judgment, of a plea which is in
the said District Court before you, between the
United States of America, as plaintiff, and Louie
Ding, as defendant, a manifest error hath happened,
to the great damage of the said defendant, as by his
complaint appears, and we being willing that error,
if any hath been, should be corrected, and full and
speedy justice done to the party aforesaid in this
behalf, do command you, if judgment be therein
given, that under your seal, you send the record and
proceedings aforesaid with all things concerning

the same to the United States Circuit Court of Appeals for the Ninth Circuit together with this writ, so that you have the same at the city of San Francisco, in the state of California, where said court is sitting, within thirty days from the date hereof in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States of America, this 8th day of November, 1916.

(Seal)

FRANK L. CROSBY,

Clerk of the United States District Court for the Western District of Washinton, Northern Division.

Allowed this 8th day of November, 1916, after plaintiff in error had filed with the clerk of this court with his petition for a writ of error, his assignment of errors.

JEREMIAH NETERER,

Judge of the District Court of the United States, for the Western District of Washington, Northern Division.

Copy of within Writ of Error received and acknowledged this 8th day of November, 1916.

CLAY ALLEN,
WINTER S. MARTIN,

Attorneys for Plaintiff.

Indorsed: No. 3299. In the United States Circuit Court of Appeals for the Ninth Circuit. Louie Ding, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 8, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. Walter S. Fulton and W. R. Bell, Attorneys for Plaintiff in Error.

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3299

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MELVIN B. MILLER, WILLIAM KIRKLAND,
LOUIE E. LORTIE, HARRY TOY and
LOUIE DING,

Defendants.

CITATION ON WRIT OF ERROR.

TO THE UNITED STATES OF AMERICA:
GREETING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein Louie Ding is plaintiff in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS the Honorable Jeremiah Neterer, Judge of the United States District Court for the Western District of Washington, Northern Division, this 8th day of November 1916.

JEREMIAH NETERER,

(Seal)

Judge.

Copy of within Citation received and due service of the same acknowledged this 8th day of November, 1916.

CLAY ALLEN,
WINTER S. MARTIN,

Attorneys for Plaintiff.

Indorsed: No. 3299. In the District Court of the United States for the Western District of Washington, Northern Division, United States of America, Plaintiff, vs. Louie Ding, et al., Defendants. Citation on Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 8, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. Service of papers in this case may be made upon Walter S. Fulton and W. R. Bell, Attorneys for Defendant Louie Ding. 1112 Hoge Building, Seattle, Wash.